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10/521,031	01/12/2005	Robert H Murphy	20020001-US	6558
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BAE SYSTEMS PO BOX 868 NASHUA, NH 03061-0868			EXAMINER NGUYEN, LUONG TRUNG	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/521,031
Filing Date: January 12, 2005
Appellant(s): MURPHY ET AL.

Douglas P. Burum
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09/20/2010 appealing from the Office action mailed 04/28/2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-4, 8-13, 15-16, 21-22, 23-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

Whether Claims 1-4, 8-13, 15-16, 21-22, 23-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4, 8-13, 15-16, 21-22, 23-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 1, claim 1 is amended with newly added limitation "infra-red radiation emitted by the lens" on (lines 9-10, 15-16). The specification does not have support for this newly added limitation.

Regarding claim 10, claim 10 is amended with newly added limitation "infra-red radiation emitted by the lens" on (lines 6, 14, and 20). The specification does not have support for this newly added limitation.

Regarding claim 15, claim 15 is amended with newly added limitation “infra-red radiation emitted by the lens” on (lines 7, 12-13, and 15). The specification does not have support for this newly added limitation.

Claims 2-4, 8-9, 23-24 are rejected as being dependent from claim 1.

Claims 11-13 are rejected as being dependent from claim 10.

Claims 16, 21-22 are rejected as being dependent from claim 15.

(10) Response to Argument

In re page 9, Appellants argue that the specification clearly discloses that the FPA can detect the internal flux. The paragraph [0015] recites “generating a closed state image signal that includes **internal radiant flux** of the system.” The lens is specifically indicated in the specification as being an internal element of the imaging system, e.g. in paragraph [0012] and item 120 in Figure 1. Therefore, the infra-red radiation emitted by the lens is necessarily included in the internal flux.

In response, it should be noted that the feature “**internal radiant flux**” was not recited in the rejected claims.

Regarding claims 1, 10 and 15, all these independent claims were amended with the newly added limitation that the FPA has sufficient sensitivity to detect “**infra-red radiation emitted by the lens**,” which was not specifically described in the specification. The originally filed specification does disclose that the FPA can detect the internal flux of the system, i.e. the sum of all flux being generated by all the internal components of the system. However, the

specification, paragraphs [0012] and [0015] do not disclose the lens itself emits infra-red radiation, i.e., “infra-red radiation emitted by the lens,” nor does the specification as originally filed disclose that the FPA has sufficient sensitivity to only detect infra-red radiation emitted by the lens. While the specification is clear that the FPA has sufficient sensitivity to detect the sum of all infra-red radiation emitted internally by the system, the specification is silent as to whether the radiation emitted by the lens itself has sufficient intensity to be detected by the FPA.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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